

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 2.43.441 and)
2.43.1015 pertaining to)
transfer of funds for)
certain service purchases)

NOTICE OF PUBLIC
HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 2, 2005, at 10:00 a.m. a public hearing will be held in the conference room at 100 North Park, Suite 200 of the Montana Public Employee Retirement building at Helena, Montana, to consider the amendment of ARM 2.43.441 and 2.43.1015 pertaining to transfer of funds from a member's 26 USC 403(b) tax-sheltered annuity or 26 USC 457 governmental plan prior to the member's severance from employment.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on April 25, 2005, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

2.43.441 PURCHASE OF SERVICE THROUGH DIRECT TRUSTEE-TO-TRUSTEE TRANSFER OF FUNDS (1) ~~At~~ Subject to (2), any time prior to retirement, a member who is statutorily eligible to do so, may purchase service in the member's current retirement system through a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) tax-sheltered annuity or 26 U.S.C. 457 governmental plan.

(2) A transfer of funds from the member's 26 USC 403(b) tax-sheltered annuity or 26 USC 457 governmental plan prior to the member's severance from employment can be made only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Internal Revenue Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code. A purchase of service pursuant to 19-3-513, 19-6-804, 19-7-804, or 19-8-904, MCA, is not a purchase of permissive service credit.

AUTH: 19-2-403, 19-2-1010, 19-3-2104, MCA

IMP: 19-2-704, 19-3-2113, 19-3-2115, MCA

2.43.1015 PURCHASE OF SERVICE NOT PERMITTED BY PARTICIPANT IN DEFINED CONTRIBUTION RETIREMENT PLAN (1) A member of the PERS with an existing service purchase contract entered into pursuant to any MPERA statute or rule who wishes to elect the defined contribution retirement plan (DCRP) or the Montana university system's optional retirement plan (ORP) must terminate or complete the service purchase contract before the election will be confirmed by MPERA.

(2) If a member of the PERS with an existing service purchase contract files an election form electing either the DCRP or the ORP, MPERA will send written notice to the member that the election cannot be confirmed until the service purchase contract is either terminated or completed.

(3) The notice will give the member 30 days to provide MPERA with written notification of the member's intentions.

(4) The member must choose one of the following options:

(a) pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP; or

(b) pay nothing more to MPERA and have the prorated amount of service purchased under the contract transferred to the DCRP; or

(c) change the member's election to the defined benefit retirement plan (DBRP).

(5) If a member chooses the option in (4)(a), the member may, pursuant to ARM 2.43.441, complete the service purchase contract with a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) tax-sheltered annuity or 26 U.S.C. 457 governmental plan, subject to (5)(a):-

(a) A transfer of funds from the member's 26 USC 403(b) or 26 USC 457 governmental plan prior to the member's severance from employment can be made only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Internal Revenue Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code. A purchase of service pursuant to 19-3-513, 19-6-804, 19-7-804, or 19-8-904, MCA, is not a purchase of permissive service credit.

(6) If a member chooses the option in (4)(a), but then fails to complete the service purchase contract by the end of the member's 12-month election window, MPERA will unilaterally implement (4)(b).

(7) If a member with an existing service purchase contract fails to provide MPERA with written notice of the member's intentions within 30 days, MPERA will unilaterally implement (4)(b). MPERA will take this action at the close of the 30-day timeframe.

(8) A member with an existing service purchase contract who elects the DCRP or the ORP in the last month of the member's 12-month election window may pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP. The payment must accompany the election form.

(a) If the member does not pay the entire amount due at the time the member files the election form, MPERA will unilaterally implement (4)(b).

(b) The member will not be given time to pay off the existing service purchase contract after the close of the member's 12-month election window.

(9) A PERS member with an existing service purchase contract entered into pursuant to any MPERA statute or rule who does not elect the DCRP or the ORP may not terminate the service purchase contract pursuant to this rule.

AUTH: 19-2-403, 19-2-1010, 19-3-2104, MCA

IMP: 19-2-710, 19-3-2111, 19-3-2112, 19-3-2115, MCA

REASON: The Montana Public Employees' Retirement Board (the Board), pursuant to 19-2-1010, MCA, must administer the retirement plans in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code and consequent federal regulations. Recent Internal Revenue Service regulations proscribe transfers under certain circumstances. The proposed amendments are necessary to conform the Board's rules to the Internal Revenue Service regulations for qualified governmental plans.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@state.mt.us and must be received no later than May 2, 2005.

5. Carolyn Miller, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana 59620-0131 has been designated to preside over and conduct the hearing.

6. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office

at (406) 444-5428; or e-mailed to cmllderstate.mt.us; or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Terry Teichrow, President
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on March 21, 2005.